IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation, Plaintiff, vs. PLAZA ENTERTAINMENT, INC., a corporation; ERIC PARKINSON, an individual; CHARLES von BERNUTH, an individual; and JOHN HERKLOTZ, an individual, Defendants	C.A. No. 03-1398 Senior Judge William L. Standish

DEFENDANT HERKLOTZ'S ANSWER,
AFFIRMATIVE DEFENSES AND CROSSCLAIMS

AND NOW, comes Defendant, John Herklotz, an individual, by and through his counsel, John P. Sieminski, Esquire, and Burns, White & Hickton, LLC., and files this Answer and Affirmative Defenses, of which the following is a statement:

1. Admitted.

2. Denied.

3. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of this averment.

4. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of this averment.

5. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of this averment.

EXHIBIT
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6. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of this averment.

7. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of this averment.

8. The averments of paragraph 8 are admitted in part and denied in part. It is admitted that defendant Herklotz is an individual, and that he was Chairman of the Board of defendant Plaza from approximately September 1997 to April 1998. The balance of the averments are denied.

9. Admitted.

10. Admitted.

11. through 22. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of thesd averments and they are therefore deemed denied pursuant to applicable Rules of Federal Civil Procdedure.

Count I

23. through 27. The averments are not directed to this Defendant.

WHEREFORE, John Herklotz, an individual, respectfully requests that the Court enter Judgment in his favor and against all other parties.

Count II

28. Paragraphs 1 through 27 are incorporated herein by reference.

29. and 30. To the extent the averments in paragraphs 29 and 30 relate to Defendant Herklotz, they are denied.

WHEREFORE, John Herklotz, an individual, respectfully requests that the Court enter Judgment in his favor and against all other parties.

Count III

31. through 33. The averments are not directed to this Defendant.

WHEREFORE, John Herklotz, an individual, respectfully requests that the Court enter Judgment in his favor and against all other parties.

Count IV

34. through 38. The averments are not directed to this Defendant.

WHEREFORE, John Herklotz, an individual, respectfully requests that the Court enter Judgment in his favor and against all other parties.

Count V

39. Paragraphs 1 through 27 are incorporated herein by reference.

40. and 41. To the extent the averments in paragraphs 40 and 41 relate to Defendant Herklotz, they are denied.

WHEREFORE, John Herklotz, an individual, respectfully requests that the Court enter Judgment in his favor and against all other parties.

Count VI

42. through 47. The averments are not directed to this Defendant.

WHEREFORE, John Herklotz, an individual, respectfully requests that the Court enter Judgment in his favor and against all other parties.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

48. The Complaint fails to set forth a claim on which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

49. The alleged personal guaranty of Defendant Herklotz is null and void, and of no force or effect. There was not separate consideration for the alleged guaranty, said alleged guaranty being signed prior to the agreement by Plaintiff to extend credit to Defendant Plaza.

THIRD AFFIRMATIVE DEFENSE

50. By signing the Services Agreement dated October 12, 1998, Defendants, Plaza, Parkinson and/or von Bernuth materially changed Plaza's obligations to Plaintiff, and Defendant Herklotz's alleged obligations pursuant to the document signed by Mr. Herklotz dated May 9, 1998 were discharged by the Defendants' actions.

FOURTH AFFIRMATIVE DEFENSE

51. Should it be determined that Defendant Herklotz must answer for any part of the alleged debt owed by Defendant Plaza to Plaintiff, then Defendant is only responsible for any amounts provided for, and within the scope of, the document signed by Defendant Herklotz and attached to the Complaint as Exhibit "B."

FIFTH AFFIRMATIVE DEFENSE

52. Should it be determined that Defendant Herklotz must pay any part of the alleged debt owed by Defendant Plaza to Plaintiff, Defendant Herklotz is entitled to the benefit of any defense to the underlying contract of Plaza. Therefore, all defenses to the contract by Defendant Plaza are incorporated herein by reference, as though set forth at length.

SIXTH AFFIRMATIVE DEFENSE

53. To the extent that Defendant Plaza's obligations to Plaintiff were materially changed after the execution of the document by Defendant Herklotz, Defendant Herklotz is not responsible for payment of any amounts beyond those contemplated at the time of signing of the said document.

SEVENTH AFFIRMATIVE DEFENSE

54. Defendant Herklotz is not liable to Plaintiff for the alleged debt, or any portion thereof, owed by Defendant to Plaza until such time as Defendant

Plaza makes an assignment for the benefit of creditors, or until such time as a Petition in Bankruptcy has been filed by or against Defendant Plaza.

EIGHTH AFFIRMATIVE DEFENSE

55. For a portion of the time during which WRS and Plaza did business, WRS controlled the business of Defendant Plaza and, in so doing, operated the business to the detriment of Defendant Herklotz, in that it caused Plaza to incur additional debt and/or to allocate payments of debt in such a way as to benefit WRS to the detriment of Herklotz, thus breaching a fiduciary duty to Herklotz and discharging him as an alleged guarantor.

NINTH AFFIRMATIVE DEFENSE

56. To the extent that any collateral or security associated with the alleged extension of credit to Defendant Plaza was within the possession and/or control of Plaintiff WRS, Plaintiff had a duty to refrain from any acts or omissions which would impair the value of the collateral or security for the alleged extension of credit. To the extent that any acts or omissions of Plaintiff in fact impaired the value of that collateral or security, Defendant Herklotz is discharged from any alleged obligations to Plaintiff to the extent that the unimpaired security would have been paid the alleged debt, and/or to the extent of Defendant Herklotz's injury as an alleged guarantor.

TENTH AFFIRMATIVE DEFENSE

57. The document signed by Defendant Herklotz and attached to Plaintiff's Complaint as Exhibit "B" is null and void, since it was obtained based on intentional misrepresentations.

CROSSCLAIMS

COUNT I
John Herklotz v. Plaza Entertainment, Inc.

58. Defendant, John Herklotz, sets forth the following Crossclaim against Defendant Plaza Entertainment, Inc., Eric Parkinson and Charles von Bernuth:

59. Defendant Herklotz incorporates herein by reference, without admitting the truth thereof, but solely for the purposes of contribution and/or indemnity, the averments of Plaintiff's Complaint.

60. If at the time of trial, Defendant Herklotz is held to be responsible for any portion of Plaza's alleged debt to Plaintiff, Defendant Herklotz is entitled to indemnity or reimbursement from Defendant Plaza for any amounts paid to Plaintiff by Defendant Herklotz together with interest thereon at the legal rate.

WHEREFORE, Defendant, John Herklotz, demands judgment in his favor and against Defendant, Plaza Entertainment, Inc. and against the Plaintiff on its claims

COUNT II

John Herklotz v. Eric Parkinson and Charles von Bernuth

61. Defendant, John Herklotz, sets forth the following Crossclaim against Defendants Eric Parkinson and Charles von Bernuth:

62. Defendant incorporates herein by reference, without admitting the truth thereof, but solely for the purposes of contribution and/or indemnity, the allegations of Plaintiff's Complaint.

63. Should it be determined at trial that Defendant Parkinson and/or von Bernuth guaranteed the alleged debt, or any portion thereof, owed by Defendant Plaza to Plaintiff, then Defendants von Bernuth and Parkinson are solely liable to Plaintiff for the reasons set forth in Plaintiff's Complaint, which are incorporated herein by reference as though set forth at length, or are liable over to Defendant Herklotz for indemnity.

64. Should it be determined at trial that Defendant Herklotz, as well as Defendants Parkinson and/or von Bernuth guaranteed the alleged debt, or any portion thereof, owed by Defendant Plaza to Plaintiff, and these Defendants are responsible for payment of the alleged debt, or any portion thereof, then Defendants Parkinson and von Bernuth are liable to Plaintiff with Defendant Herklotz as co-guarantors, or are liable over to Defendant Herklotz for contribution together with interest thereon at the legal rate.

WHEREFORE, Defendant John Herklotz demands judgment in his favor and against Defendants Eric Parkinson and Charles von Bernuth, and against the Plaintiff on his claims.

COUNT III
John Herklotz v. Eric Parkinson and Charles von Bernuth

65. Defendant John Herklotz sets forth the following Crossclaim against Eric Parkinson and Charles von Bernuth:

66. Eric Parkinson, Charles von Bernuth and Defendant Herklotz were shareholders, owners, and/or principals of Defendant Plaza Entertainment, Inc.

67. As shareholders, principals and/or co-owners, each of them stood in a position of trust and confidence to the others.

68. At the request of, and with the knowledge of, Defendants Parkinson and von Bernuth, and for the mutual benefit of the Defendants, Defendant Herklotz signed the document attached to Plaintiff's Complaint as Exhibit "B".

69. Despite their knowledge that the subsequent Services Agreement signed by Defendants Parkinson and von Bernuth with Plaintiff would substantially increase the sums allegedly owed by Defendant Plaza to Plaintiff, however, Defendants Parkinson and von Bernuth did not inform Defendant Herklotz of the subsequent Services Agreement, and signed said Services Agreement without Defendant Herklotz' knowledge or consent.

70. Moreover, Defendants Parkinson and von Bernuth used monies received by Defendant Plaza from the sale of videos of "The Giant of Thunder Mountain" to pay off debts owed by Plaza to entities and/or individuals other than Plaintiff, also increasing the alleged debt owed by Defendant Plaza to Plaintiff.

71. Defendants also mishandled the sales of "The Thunder of Giant Mountain" videos by failing to properly advertise and promote the sale of the video, and therefore additional funds which could have been used to pay the

alleged debt of Plaza to Plaintiff were not realized, decreasing the funds available to pay the alleged debt owed by Defendant Plaza to Plaintiff.

72. The actions and/or omissions of Defendants Parkinson and von Bernuth, as set forth in Paragraphs 4 and 5, constitute breaches of the fiduciary duty owed by Defendants Parkinson and von Bernuth to Herklotz.

73. As a direct and proximate result of Defendants' breach of their fiduciary duties to Defendant Herklotz, Defendant Herklotz has sustained substantial damage, including but not limited to the claims by Plaintiff for sums in excess of any debt which may have been contemplated by Defendant Herklotz at the time that he executed the document attached to the Complaint as Exhibit "B", as well as the attorneys' fees and costs incurred in the defense of this matter.

74. Defendants Parkinson and von Bernuth are therefore liable to Defendant Herklotz for any amounts which he may be held liable to pay to Plaintiff together with interest thereon at the legal rate, as well as the attorneys' fees and costs incurred by Defendant Herklotz in the defense of this action.

WHEREFORE, Defendant, John Herklotz, demands judgment in his favor and against Defendants, Eric Parkinson and Charles von Bernuth, and against the Plaintiff on his claims.

COUNT V

John Herklotz v. Eric Parkinson and Charles von Bernuth

75. Defendant, John Herklotz, sets forth the following Crossclaim against Eric Parkinson and Charles von Bernuth:

76. Defendant incorporates herein by reference the allegations of Paragraphs 1 through 8 of Count IV of the Crossclaims as though set forth at length.

77. On or about May 5, 1998, Defendant Eric Parkinson and/or Charles von Bernuth represented to Defendant Herklotz that Wal*Mart had ordered a large number of "Giant of Thunder Mountain" videotapes for sale, and it was necessary for Defendant Herklotz to sign the document attached to Plaintiff's Complaint as Exhibit "B" so that WRS could proceed to make the necessary copies of the video.

78. In fact, Wal*Mart had not placed a large order for "Giant of Thunder Mountain" videos, and time was not of the essence in making the additional videos.

79. At the time that these statements were made by Defendants Parkinson and/or von Bernuth, these Defendants knew that these statements were false. In the alternative, these statements were made with reckless disregard by Defendants of their truth or falsity.

80. In addition, at the time that these statements were made, Defendants intended that Defendant Herklotz rely on these statements and to induce him to execute the document attached to Plaintiff's Complaint as Exhibit "B".

81. Defendant Herklotz justifiably relied on the misrepresentations made by Defendants Parkinson and/or von Bernuth in his agreement to sign the document attached to the Complaint as Exhibit "B".

82. As a result of the misrepresentations made by Defendants Parkinson and von Bernuth, Defendant Herklotz may be required to pay Defendant Plaza's alleged debt to Plaintiff, and has incurred attorneys' fees and costs incurred in the defense of this matter.

83. Should it be determined that Defendant Herklotz is in any way obligated to Plaintiff for the alleged debt of Defendant Plaza to Plaintiff, then Defendants Parkinson and/or von Bernuth are liable to Defendant Herklotz for any amounts for which he may be held responsible to pay to Plaintiff together with interest thereon at the legal rate, as well as attorneys' fees and costs incurred in the defense of this matter.

WHEREFORE, Defendant, John Herklotz, demands judgment in his favor and against Defendants, Eric Parkinson and Charles von Bernuth, and against the Plaintiff on his claims.

Respectfully submitted,

BURNS, WHITE & HICKTON

By:______________________

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